

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE VETERANS HOMES BOARD  
MINNESOTA VETERANS HOME-HASTINGS

In the Matter of the Appeal of the  
Discharge of D.B. from the Minnesota  
Veterans Home - Hastings

FINDINGS OF FACT,  
CONCLUSIONS, RECOMMENDATION  
AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on November 21, 2002, at the Minnesota Veterans Home in Hastings.

Appearing on behalf of the Veterans Home Board and the Minnesota Veterans Home of Hastings was Donald E. Notvik, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, MN 55103-2106. Resident D.B. appeared on his own behalf, without legal representation. The record in this matter closed on November 21, 2002, when the hearing ended.

**NOTICE**

This Report is a recommendation, not a final decision. The Minnesota Veterans Homes Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minnesota law<sup>[1]</sup> the Board may not make its final decision until after the parties have had access to this report for at least ten (10) days. During that time, the Board must give any party adversely affected by this report an opportunity to file objections to it, and to present argument. Parties should contact Minnesota Veterans Homes Board, Stephen Musser, Executive Director, 20 W. 12<sup>th</sup> Street, Suite 122, St. Paul, MN 55155, telephone (651) 296-2076, to ascertain the procedure for filing exceptions or presenting argument.

The record of this proceeding closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision.<sup>[2]</sup>

**STATEMENT OF ISSUE**

Whether the Veterans Home should discharge resident D.B. for failure to make full payment of the maintenance charges that were established in his Admission Agreement.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. D.B. is an honorably-discharged veteran of the armed forces of the United States.

2. On January 14, 2002, he signed an Admission Agreement<sup>[3]</sup> which relates, in part, to his financial responsibility for partial payment of his care. The agreement provides for a maintenance charge of "not to exceed \$1784.84 per month." However, it was understood by all parties that this was a maximum figure, and that the actual payment would be at a lesser rate calculated pursuant to Minn. Rule pt. 9050.0500, et. sec.

3. On April 29, 2002, the Veterans Administration awarded D.B. a disability pension, retroactive to February 1, 2002, of \$796.00 per month. This would have caused his maintenance charge to be \$670.70 per month. However, for several months prior to his admission into the veteran's home at Hastings, he had received food and shelter from a Jimmy Johnson. It was agreed that D.B. would pay Johnson \$2,200, and that this would be treated as an pre-existing debt. As a result of that, his maintenance charge was recomputed, and for the months of March through July of 2002, was determined to be \$252.70. After July, the maintenance fee reverted to \$670.70.<sup>[4]</sup> Since entering the home in January, D.B. has failed to pay any of the maintenance charges.<sup>[5]</sup>

4. On June 3, 2002, Charles Cox, the Administrator of the Hastings Home, issued an Initial Notice of Involuntary Discharge to D.B..<sup>[6]</sup> On June 5, 2002, D.B. requested reconsideration of the discharge.<sup>[7]</sup> The reconsideration did occur on July 3, 2002, but on July 18, 2002, Cox upheld the initial Notice, and ordered that D.B. be discharged effective August 19, 2002.<sup>[8]</sup>

5. On August 15, 2002, D.B. appealed the Order for Discharge.<sup>[9]</sup>

6. On October 15, 2002, Cox issued a Notice of and Order for Hearing, setting the hearing for November 21, 2002.

7. As of October 31, 2002, D.B.'s bill had reached \$3,946.30.

8. D.B. has applied for Social Security Disability Assistance, as well as a non-service connected pension. He has applied for public housing in South St. Paul and St. Paul, and has been approved for an apartment in South St. Paul when one becomes available. He would like to remain at the home until alternative housing becomes available, but he is unwilling to pay any maintenance charges. He believes

that he is entitled to stay at the home because of his status as an honorably discharged veteran. He believes that a person has to make choices in life, and he has chosen not to pay the maintenance charge because he has other [unspecified] needs for the money he receives from the Veterans Administration pension.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. Minnesota Law<sup>[10]</sup> give the Administrative Law Judge and the Board authority to conduct this proceeding, to consider the issues raised here, and to make Findings, Conclusions and Orders.

2. D.B. has received proper notice of his proposed discharge and of the time and place of the hearing in this administrative appeal.

3. The veterans home and the Board have complied with all of the legal requirements for conducting this proceeding.

4. Veterans Homes Board rules require veterans homes to institute proceedings to discharge a resident "when an account is delinquent ... ." <sup>[11]</sup> The Board's rules also require a veterans home to institute proceedings to discharge a resident who "fails or refused to comply with payment obligations in the admission agreement. ..." <sup>[12]</sup>

5. Under Minnesota law, <sup>[13]</sup> the veterans home has the burden of proving by a preponderance of the evidence that D.B. is delinquent in the payment of his maintenance charges or that he has refused or failed to pay those charges.

6. D.B. has not paid any of the monthly maintenance charges specified in his Admission Agreement since he was admitted to the veterans home in January of 2002, and the Board therefore has the authority to discharge him from the home.

7. The Memorandum that follows explains the reasons for these conclusions, and, to that extent, it is incorporated into these conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

THE ADMINISTRATIVE LAW JUDGE HEREBY RECOMMENDS: That the Board AFFIRM the Administrator's Order Discharging D.B. for failure to pay his monthly maintenance charges.

Dated this 9<sup>th</sup> day of January 2003.

S/ Allan W. Klein  

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ALLAN W. KLEIN  
Administrative Law Judge

## NOTICE

The Board must notify the parties of the date on which the record of this contested case proceeding closes, and must serve its final decision upon each party and the Administrative Law Judge by first class mail.<sup>[14]</sup>

## MEMORANDUM

This case is straightforward. The resident has chosen, for unspecified reasons, to use his money for purposes other than his maintenance fee. The home has attempted to work with him, and his social worker has counseled him to at least pay some of the fee. D.B. has decided not to. Based on all of the evidence in the record, in light of the statute and rules governing the home, the home has no choice but to discharge D.B.

**A.W.K.**

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<sup>[1]</sup> Minn. Stat. § 14.61.

<sup>[2]</sup> Minn. Stat. § 14.62, subd. 2a.

<sup>[3]</sup> Ex. 5.

<sup>[4]</sup> Exs. 7 and 8.

<sup>[5]</sup> Ex. 8, and Test. of Mark Kryzer and D.B.

<sup>[6]</sup> Ex. 1.

<sup>[7]</sup> Ex. 2.

<sup>[8]</sup> Ex. 3.

<sup>[9]</sup> Ex. 4.

<sup>[10]</sup> Minn. Stat. § § 14.50 and 198.003, and Minn. Rule, pt. 9050.0220.

<sup>[11]</sup> Minn. Rule pt. 9050.0520, subp. 2.

<sup>[12]</sup> Minn. Rule pt. 9050.0200, subp. 3A.

<sup>[13]</sup> Minn. Rule pt. 1400.7300, subp. 5.

<sup>[14]</sup> Minn. Stat. § § 14.62, subd. 2a, and subd. 1, respectively.